

§ 105.106

33 CFR Ch. I (7–1–10 Edition)

facilities only when they are working immediately adjacent to their vessels in the conduct of vessel activities.

[USCG–2003–14732, 68 FR 39322, July 1, 2003, as amended at 68 FR 60541, Oct. 22, 2003; USCG–2006–24196, 72 FR 55048, Sept. 28, 2007]

§ 105.106 Public access areas.

(a) A facility serving ferries or passenger vessels certificated to carry more than 150 passengers, other than cruise ships, may designate an area within the facility as a public access area.

(b) A public access area is a defined space within a facility that is open to all persons and provides pedestrian access through the facility from public thoroughfares to the vessel.

[USCG–2003–14732, 68 FR 39322, July 1, 2003, as amended at 68 FR 60540, Oct. 22, 2003]

§ 105.110 Exemptions.

(a) An owner or operator of any barge fleeting facility subject to this part is exempt from complying with §105.265, Security measures for handling cargo; and §105.270, Security measures for delivery of vessel stores and bunkers.

(b) A public access area designated under §105.106 is exempt from the requirements for screening of persons, baggage, and personal effects and identification of persons in §105.255(c), (e)(1), (e)(3), (f)(1), and (g)(1) and §105.285(a)(1).

(c) An owner or operator of any general shipyard facility as defined in §101.105 is exempt from the requirements of this part unless the facility:

(1) Is subject to parts 126, 127, or 154 of this chapter; or

(2) Provides any other service to vessels subject to part 104 of this subchapter not related to construction, repair, rehabilitation, refurbishment, or rebuilding.

(d) *Public access facility.* (1) The COTP may exempt a public access facility from the requirements of this part, including establishing conditions for which such an exemption is granted, to ensure that adequate security is maintained.

(2) The owner or operator of any public access facility exempted under this section must:

(i) Comply with any COTP conditions for the exemption; and

(ii) Ensure that the cognizant COTP has the appropriate information for contacting the individual with security responsibilities for the public access facility at all times.

(3) The cognizant COTP may withdraw the exemption for a public access facility at any time the owner or operator fails to comply with any requirement of the COTP as a condition of the exemption or any measure ordered by the COTP pursuant to existing COTP authority.

(e) An owner or operator of a facility is not subject to this part if the facility receives only vessels to be laid-up, dismantled, or otherwise placed out of commission provided that the vessels are not carrying and do not receive cargo or passengers at that facility.

[USCG–2003–14732, 68 FR 39322, July 1, 2003, as amended at 68 FR 60540, Oct. 22, 2003]

§ 105.115 Compliance dates.

(a) On or before December 31, 2003, facility owners or operators must submit to the cognizant COTP for each facility—

(1) The Facility Security Plan described in subpart D of this part for review and approval; or

(2) If intending to operate under an approved Alternative Security Program, a letter signed by the facility owner or operator stating which approved Alternative Security Program the owner or operator intends to use.

(b) On or before July 1, 2004, each facility owner or operator must be operating in compliance with this part.

(c) Facility owners or operators wishing to designate only those portions of their facility that are directly connected to maritime transportation or are at risk of being involved in a transportation security incident as their secure area(s) must do so by submitting an amendment to their Facility Security Plan to their cognizant COTP, in accordance with §105.415 of this part, by September 4, 2007.

(d) Persons required to obtain a TWIC under this part may enroll beginning after the date set by the Coast Guard in a Notice to be published in the FEDERAL REGISTER. This notice will be directed to all facilities and vessels within a specific COTP zone.

(e) Facility owners or operators must be operating in accordance with the TWIC provisions in this part by the date set by the Coast Guard in a Notice to be published in the FEDERAL REGISTER. This Notice will be published at least 90 days before compliance must begin, and will be directed to all facilities within a specific Captain of the Port zone, based on whether enrollment has been completed in that zone. Unless an earlier compliance date is specified in this manner, all facility owner or operators will need to implement their TWIC provisions no later than April 15, 2009.

[USCG-2003-14732, 68 FR 39322, July 1, 2003, as amended at 68 FR 60540, Oct. 22, 2003; USCG-2004-19963, 70 FR 74669, Dec. 16, 2005; USCG-2006-24196, 72 FR 3582, Jan. 25, 2007; 72 FR 38486, July 13, 2007; 73 FR 25565, May 7, 2008]

§ 105.120 Compliance documentation.

Each facility owner or operator subject to this part must ensure, on or before July 1, 2004, that copies of the following documentation are available at the facility and are made available to the Coast Guard upon request:

(a) The approved Facility Security Plan (FSP), as well as any approved revisions or amendments thereto, and a letter of approval from the COTP dated within the last 5 years;

(b) The FSP submitted for approval and an acknowledgement letter from the COTP stating that the Coast Guard is currently reviewing the FSP submitted for approval, and that the facility may continue to operate so long as the facility remains in compliance with the submitted FSP; or

(c) For facilities operating under a Coast Guard-approved Alternative Security Program as provided in § 105.140, a copy of the Alternative Security Program the facility is using, including a facility specific security assessment report generated under the Alternative Security Program, as specified in § 101.120(b)(3) of this subchapter, and a letter signed by the facility owner or operator, stating which Alternative Security Program the facility is using and certifying that the facility is in full compliance with that program.

[USCG-2003-14732, 68 FR 39322, July 1, 2003, as amended at 68 FR 60541, Oct. 22, 2003]

§ 105.125 Noncompliance.

When a facility must temporarily deviate from the requirements of this part, the facility owner or operator must notify the cognizant COTP, and either suspend operations or request and receive permission from the COTP to continue operating.

[USCG-2003-14732, 68 FR 60541, Oct. 22, 2003]

§ 105.130 Waivers.

Any facility owner or operator may apply for a waiver of any requirement of this part that the facility owner or operator considers unnecessary in light of the nature or operating conditions of the facility, prior to operating. A request for a waiver must be submitted in writing with justification to the Commandant (CG-54) at 2100 2nd St. SW., Stop 7581, Washington, DC 20593-7581. The Commandant (CG-54) may require the facility owner or operator to provide data for use in determining the validity of the requested waiver. The Commandant (CG-54) may grant, in writing, a waiver with or without conditions only if the waiver will not reduce the overall security of the facility, its employees, visiting vessels, or ports.

[USCG-2003-14732, 68 FR 39322, July 1, 2003; 68 FR 41916, July 16, 2003; USCG-2008-0179, 73 FR 35009, June 19, 2008; USCG-2010-0351, 75 FR 36282, June 25, 2010]

§ 105.135 Equivalents.

For any measure required by this part, the facility owner or operator may propose an equivalent as provided in § 101.130 of this subchapter.

§ 105.140 Alternative Security Program.

(a) A facility owner or operator may use an Alternative Security Program approved under § 101.120 of this subchapter if:

(1) The Alternative Security Program is appropriate to that facility;

(2) The Alternative Security Program is implemented in its entirety.

(b) A facility owner or operator using an Alternative Security Program approved under § 101.120 of this subchapter must complete and submit to